

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

DARELL BARTOS)	Case Number
)	
Plaintiff)	
)	
vs.)	CIVIL COMPLAINT
)	
PATENAUDE & FELIX, APC)	
)	JURY TRIAL DEMANDED
Defendant)	
)	

COMPLAINT AND JURY DEMAND

COMES NOW, Plaintiff, Darrell Bartos, by and through his undersigned counsel, Kerri Petty, Esquire, complaining of Defendant, and respectfully avers as follows:

I. INTRODUCTORY STATEMENT

1. Plaintiff, Darrell Bartos, is an adult natural person and brings this action for actual and statutory damages and other relief against Defendant for violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"), which prohibits debt collectors from engaging in abusive, deceptive and unfair practices.

II. JURISDICTION

2. Jurisdiction of this Court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337.

3. Venue in this District is proper in that the Defendant conducts business in this District and maintains a primary office in this District.

III. PARTIES

4. Plaintiff, Darrell Bartos, is an adult natural person residing in Alexandria, MN 56308. At all times material and relevant hereto, Plaintiff is a (“consumer”) as defined by the FDCPA, 15 U.S.C. § 1692a (2).

5. Defendant, Patenaude & Felix, APC (“Defendant”), at all times relevant hereto, is a professional corporation engaged in the business of collecting debt within the state of California with its primary address at 4545 Murphy Canyon Road, 3rd Floor, San Diego, CA 92123.

6. Defendant is engaged in the collection of debts from consumers using the telephone and mail. Defendant regularly attempts to collect consumer debts alleged to be due to another. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. §1692a(6).

IV. FACTUAL ALLEGATIONS

7. Plaintiff began receiving calls from Defendant and their agent in early April, 2010, looking for payment on an alleged debt owed on a Bank of America account for approximately \$8,647.00.

8. Plaintiff informed the agent, “Phillip Kirk”, that he had retained the services of the law firm Persels & Associates, LLC to help him handle the settlement of his debt and that they should call and speak with them directly.

9. Defendant’s agent, “Phillip Kirk”, said ok and that he would stop contacting the Plaintiff on this matter.

10. On or about April 13, 2010, Persels sent a “cease & desist” letter to the Defendant reminding them again that they were representing the Plaintiff and to direct all further calls to their attention. **See Exhibit “A” (letter) attached hereto.**

11. However, on or about April 20, 2010, Plaintiff received another call from Defendant’s agent, “Phillip Kirk”, in regards to same debt trying to set up payment arrangements.

12. On or around May 6, 2010, Plaintiff received another call from Defendant’s agent, “Phillip Kirk”, demanding payment on the above mentioned account.

13. On that call, Plaintiff reminded the agent that Defendant had received a “cease & desist” letter and that they should not be calling him.

14. Defendant’s agent, “Phillip Kirk”, went on to tell the Plaintiff that he was going to pay in full and that they would not accept any deal from Persels & Associates.

15. Plaintiff informed “Phillip Kirk”, that he did not have the money to pay this account off in full.

16. Defendant’s agent then asked the Plaintiff if his wife had a job.

17. Plaintiff was told that if they had to, Defendant would garnish her wages to get the debt paid.

18. Defendant’s agent, “Phillip Kirk”, threatened to put a lien on Plaintiff’s property.

19. Defendant’s agent went on to tell the Plaintiff that they would take a judgment on him to get the money that he owed.

20. To date, there has been no judgment place on the Plaintiff.

21. Defendant’s agent is not an attorney.

22. The Defendant acted in a false, deceptive, misleading and unfair manner when they engaged in conduct the natural consequence of which is to harass, oppress or abuse such person in connection with the collection of a debt.

23. The Defendant knew or should have known that their actions violated the FDCPA. Additionally, Defendant could have taken the steps necessary to bring their and their agent's actions within compliance of the FDCPA, but neglected to do so and failed to adequately review those actions to insure compliance with the law.

24. At all times pertinent hereto, Defendant was acting by and through its agents, servants and/or employees, who were acting within the scope and course of their employment, and under the direct supervision and control of Defendant herein.

25. At all times pertinent hereto, the conduct of Defendant as well as its agents, servants and/or employees, was malicious, intentional, willful, reckless, negligent and in wanton disregard for federal and state law and the rights of the Plaintiff herein.

26. As a result of Defendant's conduct, Plaintiff has sustained actual damages, including, but not limited to, injury to Plaintiff's reputation, damage to Plaintiff's credit, invasion of privacy, out-of-pocket expenses, physical, emotional and mental pain and anguish and pecuniary loss and he will continue to suffer same for an indefinite time in the future, all to his great detriment and loss.

COUNT I - FDCPA

27. The above paragraphs are hereby incorporated herein by reference.

28. At all times relevant hereto, Defendant was attempting to collect an alleged debt which was incurred by Plaintiff for personal, family or household purposes and is a "debt"

defined by 15 U.S.C. § 1692a(5).20. The foregoing acts and omissions constitute violations of the FDCPA, including, but not limited to, violations of:

- §§ 1692c(a)(2): After it knows the consumer to be represented by an attorney unless attorney consents or is unresponsive
- §§ 1692c(c): After written notification that consumer refuses to pay debt or that consumer wants collector to cease communication
- §§ 1692d: Any conduct the natural consequence of which is to harass, oppress, or abuse any person
- §§ 1692d(5): Caused the phone to ring or engaged any person in telephone conversations repeatedly
- §§ 1692e: Any other false, deceptive, or misleading representation or means in connection with the debt collection
- §§ 1692e(2): Character, amount or legal status of the alleged debt
- §§ 1692e(4): Nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment
- §§ 1692e(10): Any false representation or deceptive means to collect a debt or obtain information about a consumer
- §§ 1692f: Any unfair or unconscionable means to collect or attempt to collect the alleged debt

WHEREFORE, Plaintiff respectfully prays that judgment be entered against the Defendant, Patenaude & Felix, APC for the following:

- a. Actual damages;
- b. Statutory damages pursuant to 15 U.S.C. § 1692k;
- c. Reasonable attorney's fees and litigation expenses, plus costs of suit; and
- d. Such additional and further relief as may be appropriate or that the interests of justice require.

V. JURY DEMAND

Plaintiff hereby demands a jury trial as to all issues herein.

Respectfully submitted,

Date: July 6, 2010

BY: /s/ Kerri Petty
Kerri Petty #0277307
1285 Euclid Street
St. Paul, MN 55106
Attorney for Plaintiff

EXHIBIT "A"

PO Box 6489
Columbia, MD 21045

PERSELS & ASSOCIATES, LLC
PERSELS & ASSOCIATES, LLP (CA, MI)
A National Law Firm Dedicated to Consumer Rights

Neil J. Ruther, licensed in MD
Leza Griffith, licensed in MD, DC
William Grafton, licensed in MS, TX
Lisa L. Perrillo, licensed in NY, NC
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Phone: (800) 498-6761
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PATENAUDE & FELIX
4545 MURPHY CANYON RD 3RD FL
SAN DIEGO CA 92123

April 13, 2010

Client Name: Darrel Bartos and Nancy Bartos
Creditor Account Number: 4352377595866904
Client SSN: XXX-XX-7631 and XXX-XX-9445

To Whom It May Concern:

Our law firm has been retained by Darrel Bartos and Nancy Bartos. Persels & Associates has a limited power of attorney to represent this client in debt settlement negotiations. Please update your records to reflect the firm as your contact for settlement of our client's debts. Cease all further direct contact with our client pursuant to the Fair Debt Collections Practices Act.

This scope of our representation does not include entry of appearance on behalf of the client in any related litigation. We do not accept service on behalf of our client in any proceeding. All court papers and notices must be served directly on the party.

You can reach Persels & Associates at (800) 498-6761. We will contact you in the future to discuss possible settlement options. We look forward to working with you and appreciate your assistance in resolving this matter so that we can expedite a solution that is best for everyone.

Sincerely,

Kerri Petty
Counsel
Persels & Associates